

ASSESSING DOMESTIC SERVITUDE IN THE CONTEXT OF KENYAN DOMESTIC
WORKERS IN THE KINGDOM OF SAUDI ARABIA

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University Law School

By

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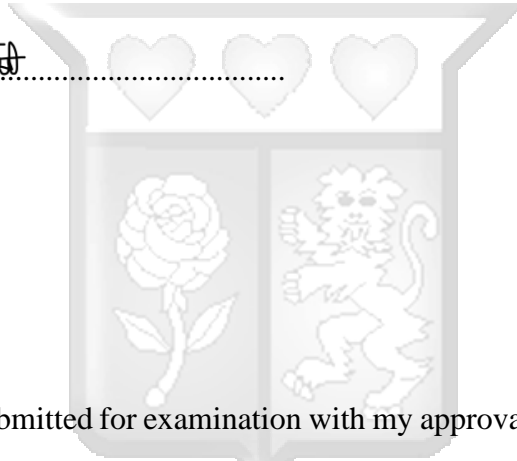
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Declaration

I, **CINDY WANJIKU NYANJUI**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: 

Date: 31/1/2025



This dissertation has been submitted for examination with my approval as University Supervisor.

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I would like to thank my parents who have continued to show me support through this entire process. I am also grateful for the guidance and support of my supervisor, Mr Kelvin Mbatia Wachira all through the writing of this dissertation.



ABSTRACT

This research explores domestic servitude among Kenyan domestic workers in the Kingdom of Saudi Arabia, emphasising the need for substantial policy reforms. Domestic servitude, marked by severe exploitation and lack of adequate protection, remains a critical issue despite the high number of Kenyan domestic migrant workers employed in this sector. This study seeks to address the urgent need for comprehensive reforms to enhance the welfare and rights of these workers.

The significance of this research lies in its focus on a vulnerable group often overlooked in broader discussions on migrant labour. The study identifies significant gaps in existing policies and legal frameworks that inadequately protect domestic workers from exploitative conditions. By highlighting these gaps, the research aims to reveal the systemic issues contributing to domestic servitude.

Employing a mixed-methods approach, the research includes a thorough review of existing literature, case studies, and normative analysis of legal frameworks. This methodology provides a comprehensive understanding of the socio-economic and cultural challenges faced by Kenyan domestic workers in Saudi Arabia.

TABLE OF CONTENTS

Declaration	ii
ABSTRACT	iv
LIST OF LEGAL INSTRUMENTS	viii
LIST OF ABBREVIATIONS	viii
CHAPTER1: INTRODUCTION	1
1.1 BACKGROUND TO THE STUDY	2
1.2 STATEMENT OF THE PROBLEM	4
1.3 RESEARCH OBJECTIVES	6
1.4 RESEARCH QUESTIONS	6
1.5 HYPOTHESIS	6
1.6 JUSTIFICATION OF THE STUDY	7
1.7 THEORETICAL FRAMEWORK	7
1.8 LITERATURE REVIEW	9
1.8.1 STRUCTURAL AND SYSTEMIC EXPLOITATION OF MIGRANT DOMESTIC WORKERS	10
1.8.2 LEGAL REFORMS, POLICY SHORTCOMINGS, AND THE SPECIFIC EXPERIENCES OF MIGRANT DOMESTIC WORKERS	11
1.9 RESEARCH METHODOLOGY	13
1.10 LIMITATIONS OF STUDY	14
1.11 CHAPTER BREAKDOWN	14
CHAPTER 2: THE FACTUAL SITUATION OF DOMESTIC SERVITUDE AMONG KDW IN THE KSA	16
2.1 INTRODUCTION	16
2.2 SOCIO-ECONOMIC FACTORS THAT DRIVE KENYAN CITIZENS TO SEEK EMPLOYMENT IN THE KSA	17

2.2.1 UNEMPLOYMENT CRISIS IN KENYA	17
<i>The multi-stage process of migration</i>	18
2.2.2 GOVERNMENT RUN SITE GIVING KENYANS ACCESS TO JOBS IN THE KSA	19
2.3 THE CONTRIBUTION OF THE STRUCTURAL FRAMEWORK IN THE KSA TO DOMESTIC SERVITUDE	21
2.3.1 INTEGRATION OF SHARIA LAW IN SAUDI LABOUR LAWS	21
<i>An Overview of Sharia Law in Saudi Arabia</i>	21
<i>Sharia-Compliant Labour Protections</i>	21
2.3.2 THE KAFALA SYSTEM AND ITS LEGAL FRAMEWORK	23
<i>Definition and Origins of Kafala</i>	23
<i>Legal Status of Kafala</i>	25
2.3.3 THE IMPACT OF THE KAFALA SYSTEM ON KDW IN THE KSA	26
Working Conditions and Exploitation	26
<i>Legal and Social Challenges</i>	28
2.4 CONCLUSION	29
CHAPTER 3: ASSESSMENT OF KENYA'S LEGAL AND INSTITUTIONAL FRAMEWORK	31
3.1 INTRODUCTION	31
3.2 OVERVIEW OF EXISTING LEGAL FRAMEWORKS	31
3.2.1 CURRENT LAWS AND REGULATIONS GOVERNING LABOUR MIGRATION FROM KENYA TO THE KSA	31
<i>National Laws and Regulations in Kenya</i>	31
3.2.2 KEY POLICIES AND AGREEMENTS BETWEEN KENYA AND THE KSA	33
<i>Bilateral agreements</i>	33
<i>Government Initiatives and Programs</i>	34

3.3 EFFECTIVENESS OF LEGAL PROTECTIONS	35
3.3.1 ANALYSIS OF HOW THESE LAWS AND REGULATIONS ARE IMPLEMENTED	35
<i>Implementation of National Laws and Regulations</i>	35
<i>Enforcement of Bilateral Agreements</i>	36
<i>Role of Government and Non-Governmental Organizations</i>	37
3.3.2 CASE STUDIES OF THE EFFECTIVENESS OF THE ALREADY ESTABLISHED LEGAL PROTECTIONS	37
3.4 EXAMINATION OF THE ROLE OF KENYAN GOVERNMENT AGENCIES AND NGOS IN SUPPORTING AND PROTECTING KDW	39
Government Efforts	39
Role of NGOs	40
3.5 CONCLUSION	40
CHAPTER 4: COMPARATIVE ANALYSIS AND POLICY SOLUTIONS	42
4.1 INTRODUCTION	42
4.2 COMPARATIVE ANALYSIS OF INTERNATIONAL POLICIES	42
4.2.1 PHILIPPINES	42
4.2.2 BRAZIL	43
4.2.3 COMPARISON WITH KENYA’S LABOUR MIGRATION MANAGEMENT BILL	44
4.3 CONCLUSION	45
CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS	46
5.1 SUMMARY AND CONCLUSIONS	46
5.2 RECOMMENDATIONS	47
BIBLIOGRAPHY	49

LIST OF LEGAL INSTRUMENTS

The Constitution of Kenya (2010)

The Labour Migration Management Bill (Bill No. 16 of 2024)

Employment Act, 2007 (Act No. 11 of 2007)

Labour Relations Act, 2007 (Act No. 14 of 2007)

National Employment Authority Act, 2016 (Act No. 3 of 2016)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (Treaty Series No. 2220)

Migration for Employment Convention (Revised), 1949 (Treaty Series No. 97)

LIST OF ABBREVIATIONS

KSA - Kingdom of Saudi Arabia

KDW - Kenyan Domestic Workers

MDW -Migrant Domestic Workers

UAE - United Arab Emirates

ODW - Overseas Domestic Workers

NEAIMS -National Employment Authority Integrated Management System

NEA - National Employment Authority

ILO - International Labour Organization

NGO - Non-Governmental Organization

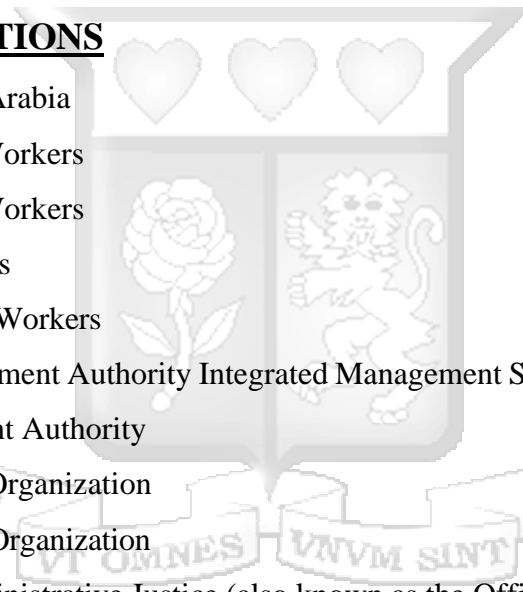
CAJ - Commission on Administrative Justice (also known as the Office of the Ombudsman)

KUDHEIHA - Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers

GAATW - Global Alliance Against Traffic in Women

OFWs - Overseas Filipino Workers

OWWA - Overseas Workers Welfare Administration



CHAPTER1: INTRODUCTION

Within the vast count of 200,000 Kenyan migrant workers in the Kingdom of Saudi Arabia (KSA), an overwhelming 151,000 serve as domestic workers, their plight obscured by Kenya's lack of proactive measures.¹ This austere reality underscores the urgency of addressing the impediments Kenyan domestic workers (KDW) face, including working up to 15 hours a day, being deprived of freedom through confiscation of passports, denial of food and rampant contract violations by their employers.² These challenges being experienced by KDW amount to domestic servitude, a term devised by advocacy groups in the mid 1990's to describe the lack of freedom of domestic workers whereby a worker is compelled to work in private households under exploitative and abusive conditions.³

The Kafala Sponsorship System that binds a *Kafil* (sponsors) to a *Makful* (person receiving the sponsorship) exacerbates the plight of KDW as its principles are being abused by employers in the KSA.⁴ The Kafala sponsorship system is deeply integrated in Sharia laws that the KSA has its policies grounded on.⁵ Correspondingly, the Kenyan government facilitates this exploitation through an online government-run site that allows jobless Kenyans to access jobs in the KSA through recruitment agencies listed on the site, many of which predominantly use the sponsorship system.⁶ The state has also failed to implement bilateral labour agreements with the KSA and develop sufficient diplomatic capacity to safeguard KDW from labour violations and exploitation.⁷

¹ Nyaga B, 'Kenya has over 151,000 immigrant domestic workers in Saudi Arabia' KBC News Center, 3 August 2023 <https://www.kbc.co.ke/kenya-has-over-151000-immigrant-domestic-workers-in-saudi-arabia/#:~:text=The%20Cabinet%20Secretary%20for%20Labour,151%2C000%20working%20as%20domestic%20workers> on 6 December 2023.

² Malit F & Youha A, 'Labor Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Dilemmas in Saudi Arabia and the United Arab Emirates' School of Industrial and Labor Relations Cornell University , IRL Working Papers, 2016, 6 <https://hdl.handle.net/1813/74768> on 5th August 2024.

³ Fudge J & Strauss K, 'Migrants, Unfree Labour, and the Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK', 2014, 165.

⁴ The Arabic-English Lexicon, 13th ed.

⁵ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers: Bringing Kafala into Sharia Compliance in Saudi Arabia', 20 UCLA Journal of Islamic and Near Eastern Law 1, 2023,163.

⁶ <https://www.neaims.go.ke/AdvertListingForeign.aspx> on 3rd August, 2024.

⁷ Malit F & Youha A, 'Labor Protection in the Gulf Countries', 17.

This paper maintains that the experiences of KDW in the KSA constitutes domestic servitude and the only way to alleviate this problem is for the Kenyan State to adopt a new approach and implement more effective policies.

This paper will first elucidate the phenomenon of domestic servitude by interrogating Kenya's entrenched unemployment crisis and the intertwined socio-economic and political imperatives that drive migration, with a critical focus on the Kafala sponsorship system as a mechanism of exploitation. It will subsequently scrutinise the prevailing legal framework regulating labour migration, evaluating the efficacy of existing statutes and policies in safeguarding KDW. Drawing from successful international policies, the paper will propose targeted solutions and finally, it will present conclusions and recommendations, advocating for specific reforms such as to safeguard KDW and ensure their rights and welfare abroad.

1.1 BACKGROUND TO THE STUDY

The significance of examining domestic servitude in the context of KDW in the KSA arises from the alarming reports of exploitation and abuse that persist due to Kenya's failure to implement sufficient measures.⁸ The Constitution of Kenya grants its citizens freedom from servitude⁹ but that is clearly not enough for KDW. In the KSA, there is a clear contrast between migrant workers in the private sector and migrant domestic workers. The 2005 Royal Decree of the KSA offers protection to migrant workers in the private sector, including those in construction, business, and clerical roles, but it does not extend these protections to Migrant Domestic Workers (MDW), who work as house helps and other domestic roles within private homes.¹⁰

For instance, while migrant workers in the private sector are safeguarded against passport confiscation, MDW often find themselves deprived of their freedom through the confiscation of their passports, a practice that has not been explicitly prohibited¹¹. Migrant workers in the private

⁸ Mutai E, 'MPs plan safe haven for Kenyan workers in Saudi', Business Daily Africa, 23 December 2020 <https://www.businessdailyafrica.com/MPs-plan-safe-haven-for-Kenyan-workers-in-Saudi/-/539546/2995322/-/yiemf/-/index.html> on 7 August 2024.

⁹ Article 25 (b), Constitution of Kenya (2010).

¹⁰ Zahra M, 'Saudi Arabia's Legal Framework of Migration: Gulf Labour Markets and Migration,' Gulf Research Centre, 3/2018, 3 https://gulfmigration.grc.net/media/pubs/exno/GLMM_EN_2018_03.pdf on 7 August 2024.

¹¹ Zahra M, 'Saudi Arabia's Legal Framework of Migration', 4.

sector are entitled to a maximum of 8 working hours a day, overtime pay, and are protected by the Wage Protection System, which ensures their wages are paid on time.¹² On the contrary, MDW can be forced to work up to 15 hours a day, are not entitled to overtime pay, and lack the same wage protections, leaving them vulnerable to delayed or unpaid wages.¹³

Moreover, while Migrant workers in the private sector have the right to transfer their sponsorship if their wages are not paid for three months, the 2021 Labour reforms that allow such transfers do not apply to MDW.¹⁴ Migrant workers in the private sector also enjoy 21 to 30 days of annual leave, whereas MDW are only entitled to 30 days of leave every two years.¹⁵ This stark disparity in protection means that MDs suffer more abuse and exploitation due to their minimal legal safeguards.

When MDW experience abuse, their only options are to continue working under these harsh conditions or to escape the household. However, escaping makes them criminals under Saudi law, despite being tortured, denied food, held hostage, and subjected to long working hours. Even when employers or sponsors violate their contracts or fail to pay wages, MDWs face charges of absconding if they leave without permission. These charges often result in jail time and deportation, further highlighting the severe vulnerabilities MDWs face in the KSA.¹⁶

The situation of MDW, specifically that of KDW, imitates domestic servitude because KDW are subjected to severe restrictions on their freedom, forced dependency on their employers, and a systematic lack of autonomy and rights, all of which are characteristic of domestic servitude.¹⁷ This is why this study advocates for the implementation of the Labour Migration Management Bill along with best practices from other countries in order to tackle the challenges faced by KDW in the KSA by implementing several protective measures. It will register and regulate employment agencies¹⁸, ensuring they operate fairly, and require security bonds from employers or agencies¹⁹

¹² Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

¹³ Zahra M, 'Saudi Arabia's Legal Framework of Migration', 4.

¹⁴ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

¹⁵ Zahra M, 'Saudi Arabia's Legal Framework of Migration', 4.

¹⁶ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

¹⁷ Siliadin v. France, ECtHR, Judgment of 26 July 2005.

¹⁸ Section 15, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

¹⁹ Section 18, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

to guarantee KDW receive their wages. The bill also mandates pre-departure training and orientation for KDW, attestation of employment contracts, and the establishment of safe houses in Saudi Arabia.²⁰ Additionally, labour attachés will be sent to monitor the well-being of KDW²¹, and a Migration Workers Welfare Fund will provide financial support in times of distress. The bill also includes provisions to restrict labour migration when the health and safety of KDW are at risk, with penalties for any violations, ultimately aiming to enhance the rights and protections for KDW.²²

While research by notable scholars like Amrita Pande,²³ Mustafa Qadri²⁴, Annelies Moors, Marina de Regt²⁵ and Emilia Truluck²⁶ has shed light on exploitation within the Kafala sponsorship system²⁷ prevalent in Middle East countries such as the KSA, the specific experiences of KDW remain underexplored. Controversies exist regarding the singular focus on the Kafala sponsorship system as the primary cause of exploitation, overlooking other pertinent factors specific to KDW for example the role of the Kenyan government in protecting their migrant domestic workers. To bridge these gaps, my study aims to employ diverse qualitative methodologies such as case studies, seeking a deeper understanding of the challenges faced by KDW. Ultimately, this research strives to inform policy reforms that better protect and support this vulnerable demographic.

1.2 STATEMENT OF THE PROBLEM

In an optimal scenario, the bilateral labour agreements between Kenya and the KSA, alongside the enactment of the Labour Migration Management Bill and the implementation of best practices from other countries, would establish a comprehensive and robust framework designed to safeguard the rights and well-being of KDW abroad. These agreements would ensure a systematic approach to labour migration, incorporating essential diplomatic measures such as the deployment

²⁰ Section 48, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

²¹ Section 11, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

²² Section 41, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

²³ Pande A, 'The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon' 47(2) *The International Migration Review*, 2013, 414.

²⁴ Qadri M, 'The UAE's kafala system: Harmless or human trafficking?' in Page M & Vittori J 1st ed, *Dubai's Role In Facilitating Corruption and Global Illicit Financial Flows* Carnegie Endowment for International Peace, 2020,79.

²⁵ Moors A & Regt M, 'Migrant Domestic Workers in the Middle East' in Schrover M, Leun J, Lucassen L, Quispel C 1st ed, *Illegal Migration and Gender in a Global and Historical Perspective* Amsterdam University Press 2008, 151.

²⁶ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 157.

²⁷ Malaeb H, 'The "Kafala" System and Human Rights: Time for a Decision' 29 (4) *Arab Law Quarterly*, 2015, 310.

of labour attachés to monitor and enforce working conditions, the establishment of safe houses to provide refuge and support, and the creation of a migration workers' welfare fund to address financial and legal needs.²⁸ The effective implementation of these agreements and legislative provisions would facilitate rigorous oversight, proactive intervention, and a supportive infrastructure, thereby preventing exploitation and upholding the dignity and rights of Kenyan workers in the KSA.

In practice, however, despite the existence of these bilateral labour agreements and legislative measures, their implementation has been markedly inadequate²⁹. The Kenyan government has fallen short in upholding the terms and provisions of these agreements, leading to ineffective enforcement and oversight of labour conditions. Diplomatic efforts, such as the deployment of labour attachés, have been insufficient, resulting in limited monitoring and support for KDW. Furthermore, the anticipated establishment of safe houses and the functioning of the migration workers' welfare fund have not materialised effectively, leaving Kenyan workers exposed to severe exploitation and abuse.³⁰

As a consequence of these shortcomings, thousands of KDW continue to endure conditions akin to domestic servitude, with minimal recourse to protection or support.³¹ The Kenyan government's failure to enforce its bilateral labour agreements and provide adequate diplomatic measures represents a significant breach of its legal and ethical obligations to protect its citizens from human rights abuses abroad.

The problem that this study seeks to address is whether Kenya's existing legal framework and diplomatic measures are effective in preventing the ongoing exploitation and domestic servitude of KDW in the KSA. By assessing the efficacy of current legislation and identifying the gaps in

²⁸ Section 11, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

²⁹ <https://www.hrsd.gov.sa/en/media-center/news/72060>

³⁰ Section 48, Labour Migration Management Bill (Senate Bill No. 16 of 2024).

³¹ Nyaga B, 'Kenya has over 151,000 immigrant domestic workers in Saudi Arabia' KBC News Center, 3 August 2023 <https://www.kbc.co.ke/kenya-has-over-151000-immigrant-domestic-workers-in-saudi-arabia/#:~:text=The%20Cabinet%20Secretary%20for%20Labour,151%2C000%20working%20as%20domestic%20workers> on 6 December 2023.

protection and enforcement, this study will explore how these shortcomings have contributed to the continued vulnerability of KDW abroad.

1.3 RESEARCH OBJECTIVES

1. To illustrate the factual situation of domestic servitude by exploring Kenya's unemployment crisis, alongside other socio-economic and political factors that compel Kenyans to seek employment in the KSA, while highlighting the role of the Kafala sponsorship system in facilitating the exploitation of these workers.
2. To assess the existing legal framework governing labour migration from Kenya to the KSA, focusing on the current laws and regulations, as well as their effectiveness in protecting KDW abroad.
3. To propose targeted solutions by examining successful policies from other countries that have addressed domestic servitude, identifying strategies that can be applied to enhance Kenya's protection of its domestic workers abroad.
4. To present conclusions and recommendations, summarising the key findings and advocating for necessary legal and regulatory reforms that can enhance the protection and welfare of KDW, emphasising the need for specific changes in policy and practice.

1.4 RESEARCH QUESTIONS

1. What is the factual situation of domestic servitude among KDW in the KSA?
2. How effective is the existing legal framework governing labour migration from Kenya to the KSA in protecting KDW?
3. What successful policies from other countries have addressed domestic servitude, and how can these strategies be applied to improve Kenya's protection of its domestic workers abroad?
4. What legal and regulatory reforms are necessary to enhance the protection and welfare of KDW, and what specific changes in policy and practice are required?

1.5 HYPOTHESIS

The shortcomings of Kenya in protecting its citizens in the KSA is a significant contributing factor to the persistence of domestic servitude among KDW in the KSA.

1.6 JUSTIFICATION OF THE STUDY

This study is crucial as it brings to light the specific challenges faced by KDW in the KSA, emphasising the need for effective policy interventions. By focusing on Kenyan workers, this research provides a detailed perspective often missing in broader studies that cover multiple nationalities. The study highlights the importance of passing the Labour Migration Management Bill which encompasses key reforms necessary for improving the situation of KDW and the importance of implementing best practices from other countries. These reforms include enhancing diplomatic capacity through measures such as setting up safe houses in the KSA, sending labour attachés to monitor the conditions of KDW, and creating a migration workers' welfare fund.

Additionally, the research seeks to encourage non-governmental organisations, advocacy groups, and support organisations to develop better support mechanisms for Kenyan domestic workers, thereby improving their working conditions and overall welfare. Although the focus is on Kenyan workers, the insights gained from this study could contribute to the global discourse on migrant worker exploitation and provide valuable lessons for addressing similar issues faced by workers from other countries.

1.7 THEORETICAL FRAMEWORK

The theoretical frameworks for this paper are the Universal Human Rights Theory³² and the Capability Approach.³³ The Universal Human Rights Theory posits that fundamental human rights are inherent to all individuals, irrespective of nationality, culture, or legal system. It asserts that these rights are universal and inalienable, meaning they apply to every person simply by virtue of being human.

This theory was prominently articulated through the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948. Key influences include John Locke, who introduced the idea of natural rights, and Thomas Jefferson, whose principles were reflected in the American Declaration of Independence. The concept evolved through contributions from various

³² Henkin L, 'The Universality of the Concept of Human Rights' 506 *The Annals of the American Academy of Political and Social Science* 1, 1989, 12.

³³ Robeyns I, 'Which Future For the Capability Approach' in Robeyns I (1st ed), Open book publishers, Cambridge, 2017, 212.

philosophers, activists, and international leaders who advocated for a universal standard of human dignity and rights.³⁴

The Universal Human Rights Theory contends that human rights are not dependent on local customs or legal frameworks but are vital to the dignity of all individuals. It divides rights into two categories: civil and political rights, which protect individuals from abuses such as torture and unfair detention, and economic, social, and cultural rights, which ensure access to necessities such as education and healthcare. This framework is grounded in the belief that certain rights are fundamental to human dignity and should be protected universally, regardless of regional or cultural differences.³⁵

In the context of assessing domestic servitude among KDW in the KSA, the Universal Human Rights Theory highlights the stark transgressions these workers face. The conditions of domestic servitude, characterised by severe exploitation, lack of freedom, and abuse, are direct breaches of universally recognized human rights. Applying this theory highlights the polarity between the lived realities of these workers and the human rights standards that are supposed to protect them. It advocates for international and national reforms to align practices with universal human rights norms, thus providing a basis for demanding justice and improved protections for KDW in the KSA.

The Capability Approach, set in motion by economist Amartya Sen and expanded by philosopher Martha Nussbaum, is a framework that assesses well-being by focusing on what individuals are actually able to do and be, rather than just their material resources or economic outcomes.³⁶ It emphasises the significance of genuine freedom and opportunities in determining people's well-being, considering how various social, economic, and institutional factors influence their ability to lead fulfilling lives.³⁷

³⁴ Henkin L, 'The Universality of the Concept of Human Rights', 12.

³⁵ Washburne C, 'The Universality of Human Rights' 35 The Phi Delta Kappan 8,1954, 308.

³⁶ Robeyns , 'Which Future For the Capability Approach', 213.

³⁷ Robeyns , 'Which Future For the Capability Approach', 213.

For this paper on domestic servitude among KDW in the KSA, this approach is particularly paramount. The theory helps in examining how the restrictive Kafala sponsorship system and harsh working conditions limit these workers' capabilities and freedoms. The Capability Approach shows how current policies fall short in protecting and enhancing these workers' lives and advocates for reforms to improve their conditions and expand their opportunities. This framework provides a thorough perspective on the systemic issues contributing to their plight and helps frame actionable recommendations for change. The Universal Human Rights Theory sets the standards for basic rights, and the Capability Approach helps explain how well these rights are actually being met in people's lives. Together, they give a comprehensive understanding and response to domestic servitude.

1.8 LITERATURE REVIEW

The phenomenon of domestic servitude among migrant domestic workers has garnered significant attention in scholarly research. This literature review critically examines the works of several authors, namely Amrita Pande³⁸, Mustafa Qadri³⁹, Annelies Moors, Marina de Regt⁴⁰, Virginia Mantouvalou⁴¹ and Emilia Truluck⁴² shedding light on the complexities surrounding the exploitation of migrant workers. The review synthesises their key findings, discusses the theories employed, evaluates their methodologies, identifies gaps in their research, and outlines the significance of exploring the experiences of Kenyan domestic migrant workers in the Kingdom of Saudi Arabia East undergoing domestic servitude. This literature review will be organised into two key themes: Structural and Systemic Exploitation of Migrant Domestic Workers and Legal Reforms, Policy Shortcomings, and the Specific Experiences of Kenyan Domestic Workers.

³⁸ Pande A, 'The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon', 414.

³⁹ Qadri M, 'The UAE's kafala system: Harmless or human trafficking?', 79.

⁴⁰ Moors A & Regt M, 'Migrant Domestic Workers in the Middle East', 151.

⁴¹ Mantouvalou, V, 'Am I Free Now? Overseas Domestic Workers in Slavery.' 42(3) Journal of Law and Society, 2015, 329.

⁴² Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

1.8.1 STRUCTURAL AND SYSTEMIC EXPLOITATION OF MIGRANT DOMESTIC WORKERS

In Pande's examination of Lebanon's sponsorship system and migrant domestic work, the focus is on unravelling the broader systemic exploitation encountered by migrant domestic workers, challenging the prevailing concentration on individual employer-employee maltreatment.⁴³ Pande discerns structural exploitation ingrained within Lebanon's sponsorship (Kafala) system⁴⁴, shedding light on how this fosters vulnerability among migrant workers, ultimately leading to the categorization of some as "illegal workers." The paper calls for a pivotal shift from a narrow focus on individual households towards holding the state accountable within the institutional framework for the systemic exploitation endured by migrant workers. Utilising methodologies like oral histories, worker interviews, and structured focus group discussions, Pande's theoretical framework seems to draw from migration studies, labour exploitation, and feminist perspectives to dissect power dynamics and systemic issues within migrant domestic work.⁴⁵

However, the paper uncovers certain gaps and avenues for further research. The regional confinement to Lebanon creates a void in understanding analogous challenges faced by migrant workers in other regions, such as Kenyan domestic workers in the Kingdom of Saudi Arabia. The paper predominantly centres on the effects of the sponsorship system, potentially neglecting other factors contributing to the exploitation of migrant workers, and offering limited exploration of the practical implementation of suggested policy recommendations. My forthcoming research focuses on Kenyan domestic migrant workers in the Kingdom of Saudi Arabia, exploring domestic servitude experiences. It aims to complement Pande's work by providing intricate insights into a specific migrant group's challenges, bridging regional gaps and delving beyond the sponsorship system.

In Mustafa Qadri's analysis of the United Arab Emirates (UAE) Kafala system and its effects on migrant workers, several critical findings stand out. The UAE heavily depends on migrant labour,

⁴³ Pande A, 'The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon', 419.

⁴⁴ Malaeb H, The "Kafala" System and Human Rights: Time for a Decision, 310.

⁴⁵ Pande A, 'The Paper that You Have in Your Hand is My Freedom': Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon', 435.

constituting a significant proportion of its population, yet despite labour reforms aimed at modernization and compliance with international standards, the Kafala system persists⁴⁶, fostering exploitation and vulnerability among workers, especially those in lower-level service, construction, and domestic sectors.⁴⁷ The government's focus on sex trafficking over labour exploitation, the power imbalance between sponsors and workers, and challenges in reform due to societal structures present notable concerns.⁴⁸ Qadri's theoretical framework blends labour migration theories with social contract theory to examine the UAE's kafala system. However, his analysis lacks specificity regarding the experiences of migrant workers from particular countries, such as Kenyan domestic migrant workers. Furthermore, while it highlights systemic issues, it falls short in exploring potential solutions beyond legislative reforms. This research focusing on Kenyan domestic migrant workers aims to fill this gap by offering a detailed examination of their experiences, shedding light on domestic servitude in the Kingdom of Saudi Arabia, and proposing context-specific solutions. Qadri's work, while insightful, might benefit from more in-depth investigations into the diverse challenges faced by different migrant groups, which my research endeavours to address to provide a more comprehensive understanding of domestic servitude in the region.

1.8.2 LEGAL REFORMS, POLICY SHORTCOMINGS, AND THE SPECIFIC EXPERIENCES OF MIGRANT DOMESTIC WORKERS

Annelies Moors and Marina de Regt's work underscores critical aspects of the experiences faced by migrant domestic workers in the Middle East, particularly focusing on recruitment practices, employment conditions, and the vulnerabilities within the kafala system.⁴⁹ Moors and de Regt employ gendered migration theories to illuminate the complexities of migrant domestic workers' experiences in the Middle East. However, their paper presents certain limitations, notably the restricted regional focus primarily on select Middle Eastern countries and the absence of specific insights into the experiences of Kenyan domestic migrant workers. My forthcoming research

⁴⁶Jureidini R & Hassan S, *The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform* in Jureidini R & Hassan S (1st ed) *Migration and Islamic Ethics: Issues of Residence, Naturalization and Citizenship*, Brill, 2020, 94.

⁴⁷ Qadri M, 'The UAE's kafala system: Harmless or human trafficking?', 80.

⁴⁸ Qadri M, 'The UAE's kafala system: Harmless or human trafficking?', 81.

⁴⁹ Moors A & Regt M, 'Migrant Domestic Workers in the Middle East', 165.

focusing on Kenyan domestic migrant workers aims to address these gaps by offering detailed and specific insights into their unique challenges and encounters with domestic servitude in the Kingdom of Saudi Arabia. While acknowledging the strengths of their in-depth exploration, my study seeks to augment the literature by offering Kenyan-specific insights, employing a more explicit theoretical framework, diverse research methodologies, and critically addressing the limitations identified in their analysis.

Virginia Mantouvalou's paper investigates the exploitation of overseas domestic workers (ODW) under the UK's visa system, particularly focusing on the ODW and diplomatic domestic worker visas..⁵⁰ Through qualitative research, she uncovers instances of exploitation, abuse, and coercion faced by these workers, revealing vulnerabilities created by the visa system. Mantouvalou uses the Capability Approach prioritises workers' freedom, focusing on functions and capabilities, and incorporates the concept of non-domination, addressing power imbalances in the workplace. However, the paper lacks specificity regarding experiences of migrant workers from specific nationalities like Kenyan domestic workers and does not mention the theoretical framework or research methodology used, limiting understanding. These gaps present opportunities for further research to explore specific migrant group experiences, employ robust theoretical frameworks, and diverse research methodologies, contributing to a comprehensive understanding of domestic servitude and informing policy interventions.

Emilia Truluck's paper offers a significant contribution to understanding the exploitation of domestic workers under the Kafala system. Truluck's analysis extends beyond the general critique of the Kafala system to specifically address the experiences of domestic workers, highlighting the limitations of recent reforms and the persisting vulnerabilities due to systemic biases. Her examination of the 2005 Royal Decree and the 2013 ministerial decision reveals how domestic workers remain largely unprotected, aligning with Pande's and Qadri's findings about systemic exploitation and the inadequacies of reform efforts. Truluck's work also critiques the *fatawa* (religious opinions) issued by *Dar al-Ifta* (Saudi Arabia's Permanent Committee for Scientific

⁵⁰ Mantouvalou, V, 'Am I Free Now? Overseas Domestic Workers in Slavery.'330.

Research and Legal Opinions), uncovering discriminatory practices that exacerbate the vulnerabilities of non-Muslim workers, including Kenyan domestic workers.⁵¹

While Truluck's paper provides a detailed critique of the legal and policy landscape, it shares similar limitations with the other studies, including a lack of focus on specific nationalities. Her insights into the shortcomings of existing reforms and the need for comprehensive policy changes resonate with the gaps identified in the literature. My research will build on Truluck's findings by offering a nuanced examination of Kenyan domestic workers' experiences in the Kingdom of Saudi Arabia, focusing on domestic servitude and proposing targeted policy interventions informed by both Truluck's and the other scholars' critiques.

The collective research by Pande, Qadri, Moors, de Regt, Mantouvalou, and Truluck underscores the systemic exploitation faced by migrant domestic workers while revealing crucial gaps. These gaps mainly revolve around the absence of a comprehensive examination of Kenyan domestic workers' experiences, failure to mention other contributing factors to domestic servitude beyond the Kafala sponsorship system, and lack of specific recommendations for regulatory reforms aimed at protecting Kenyan domestic workers in the region. A key theoretical limitation across these studies is the oversight of certain nationalities' specific experiences. In bridging these gaps, my research aims to provide a nuanced understanding of Kenyan domestic workers' domestic servitude experiences in the Kingdom of Saudi Arabia. Employing theories that consider labour exploitation, my study will utilise qualitative methodologies, including case studies, to comprehensively analyse the challenges faced by Kenyan domestic workers and propose reforms on the current policies governing Kenyan migrant workers.

1.9 RESEARCH METHODOLOGY

My research methodology employs a combination of doctrinal and normative approaches. Firstly, doctrinal methods will be used to analyse existing legal frameworks, policies, and case law related to KDW in the KSA. Secondly, a normative approach will rigorously evaluate the effectiveness of these laws and policies, identifying gaps and areas for improvement to address domestic servitude

⁵¹ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

and exploitation more effectively. This methodology will rely on secondary sources such as legal documents, policy reports, and scholarly literature to build a robust analysis

1.10 LIMITATIONS OF STUDY

Embarking on this research journey necessitates acknowledging potential limitations that could affect the validity and reliability of the findings. First, potential biases may influence the analysis of secondary data, including preconceived ideas. Time constraints may limit the breadth of the research, particularly in gathering extensive insights on the experiences of KDW in the KSA. Additionally, logistical and ethical challenges may restrict the range of materials available for review, such as legal documents or relevant scholarly literature. Despite these limitations, ensuring rigour and transparency in the research is a priority by carefully selecting credible sources and adopting a structured analytical approach to mitigate these challenges.

1.11 CHAPTER BREAKDOWN

Chapter 1: Introduction

This chapter introduces the research by outlining the background, problem statement, objectives, hypothesis, research questions, justification, theoretical framework, and literature review.

Chapter 2: The Factual Situation of Domestic Servitude

This chapter will explore the factors driving Kenyans to seek employment in the KSA, including the unemployment crisis and other socio-economic and political conditions. It will analyse how these factors contribute to domestic servitude, focusing on the role of the Kafala sponsorship system in perpetuating exploitation. Real-life stories and documented cases of KDW will also be discussed to illustrate the gravity of the situation.

Chapter 3: Assessment of Kenya's Legal Framework

This chapter will assess the current legal framework governing labour migration from Kenya to the KSA, analysing existing laws and regulations. It will evaluate the effectiveness of these frameworks in protecting KDW abroad and highlight any gaps or shortcomings that contribute to ongoing exploitation.

Chapter 4: Comparative Analysis and Policy Solutions

In this chapter, policies from other countries that have successfully addressed domestic servitude will be examined. The focus will be on identifying strategies that can be adapted to improve Kenya's protection of its domestic workers abroad. The analysis will propose solutions based on these successful models.

Chapter 5: Conclusions and Recommendations

This chapter will present a summary of the key findings, offering conclusions on the causes and consequences of domestic servitude among KDW in the KSA. It will also propose legal and regulatory reforms, emphasising the need for specific policy changes to enhance the protection and welfare of KDW.



CHAPTER 2: THE FACTUAL SITUATION OF DOMESTIC SERVITUDE AMONG KDW IN THE KSA

2.1 INTRODUCTION

This chapter aims to examine the factual situation of domestic servitude experienced by KDW in the KSA. It seeks to answer two key questions: What socio-economic factors drive Kenyan citizens to seek employment in the KSA, and how does the structural framework in the KSA contribute to their vulnerability to domestic servitude?

To address these questions, the chapter begins by exploring Kenya's unemployment crisis, a significant push factor that compels many workers to seek opportunities abroad. This section delves into the economic pressures and societal expectations that drive migration, highlighting the challenges faced by individuals in their pursuit of better livelihoods.

Next, the chapter examines the role of government-run platforms in facilitating access to overseas jobs, including those in the KSA. It assesses the effectiveness and limitations of these platforms in ensuring the safety and well-being of Kenyan workers, providing a critical analysis of their impact on labour migration.

The discussion then transitions to the kafala sponsorship system, a pivotal factor that exacerbates domestic servitude. This section provides an in-depth analysis of how the system operates and the extent to which it perpetuates exploitation and abuse of KDW. By scrutinizing the legal and social mechanisms that underpin the kafala system, the chapter highlights the systemic vulnerabilities faced by migrant workers.

By examining these interconnected elements, the chapter lays the groundwork for understanding the socio-economic realities and systemic challenges faced by KDW in the KSA. This comprehensive analysis ultimately contextualizes the need for robust policy interventions to protect the rights and well-being of these workers.

2.2 SOCIO-ECONOMIC FACTORS THAT DRIVE KENYAN CITIZENS TO SEEK EMPLOYMENT IN THE KSA

2.2.1 UNEMPLOYMENT CRISIS IN KENYA

Unemployment is a versatile issue that arises when individuals who are capable, willing, and actively seeking work cannot find suitable job opportunities.⁵² In Kenya, this problem is deeply embedded, with far-reaching implications for the economy, social stability, and the well-being of individuals. It not only limits economic growth but also leads to increased poverty, social unrest, and a growing sense of despair among the unemployed, particularly the youth.⁵³

The unemployment crisis in Kenya is driven by several factors, including a rapidly growing population, discordances between educational qualifications and market demands, and limited opportunities in the formal sector. According to the Kenya National Bureau of Statistics (KNBS), the unemployment rate for persons actively seeking for employment stands at 5.68% as of 2023.⁵⁴ A critical aspect of Kenya's labour market is the dominance of informal sector employment. Over 80% of Kenyans work in the informal sector, which is characterised by unstable, low-paying jobs with limited benefits and protections.⁵⁵ These conditions often result in what is termed "disguised unemployment," where individuals may appear employed but are underemployed, earning incomes that cannot meet their basic needs.

Youth unemployment, in particular, highlights the depth of this crisis, with 25% of young people aged 18 to 24 years unable to secure gainful employment. This demographic is disproportionately affected as many young individuals face difficulties transitioning from education to the workforce.⁵⁶ Barriers such as skill mismatches, lack of experience, and limited job creation

⁵² Gallant A, Kroft K, Lange F, Notowidigdo M, 'Temporary Unemployment and Labor Market Dynamics During the COVID-19 Recession' National Bureau of Economic Research, Working Paper Series No. 27924, 2020, 169 – [Brookings Papers on Economic Activity](#) on 1 November 2024.

⁵³ Lando P J, 'An Investigation into the Connection Between High Youth Unemployment and Increased Migration to the Gulf Region: The Experiences of Kenyan Workers' unpublished, University of Agder, Kristiansand, 2023, 11.

⁵⁴ Macrotrends, 'Kenya Unemployment Rate 1991-2024' Macrotrends, 2024—<https://www.macrotrends.net/global-metrics/countries/KEN/kenya/unemployment-rate#:~:text=Kenya%20unemployment%20rate%20for%202023,a%200.61%25%20increase%20from%202019> on 15 October 2024.

⁵⁵ Lando P J, 'An Investigation into the Connection Between High Youth Unemployment and Increased Migration to the Gulf Region,11.

⁵⁶ Business Daily, 'Refine skills in unemployment war' Business Daily, 24 August 2022—<https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/refine-skills-in-unemployment-war-3925462> on 15 October 2024.

amplifies their exclusion from the labour market. The high levels of youth unemployment not only fuels frustration and disenchantment but also contributes to broader socioeconomic challenges, including increased poverty, crime rates, and ultimately reliance on migration in search of better opportunities.⁵⁷

The multi-stage process of migration

The journey toward migration often unfolds as a multi-stage process for many Kenyans, beginning with movement from rural areas to urban centres before transitioning to international destinations such as the KSA.⁵⁸ This trajectory is shaped by a search for better opportunities, yet it frequently leads to worsening conditions at every stage.⁵⁹ The initial migration from rural to urban areas is driven by the perception that cities like Nairobi, Mombasa, and Kisumu are hubs of opportunities. Rural migrants often view urban centres as places where they can secure employment, improve their quality of life, and provide financial support for their families. However, these expectations are often far removed from reality.⁶⁰

In urban areas, the cost of living is significantly higher than in rural regions. Basic necessities such as rent, food, and transportation quickly consume most of a migrant's income, leaving little to save or send back home.⁶¹ Employment opportunities are also scarce, particularly for those without specialised skills or education. Many migrants are forced to take up low-paying and unstable jobs in the informal sector, which offer no security, benefits, or prospects for advancement. Additionally, the substandard living conditions in informal settlements further discourage urban migrants. Overcrowding, inadequate sanitation, and limited access to essential services lead to health problems and a diminished quality of life. For many, the hardships of urban life reveal that the promise of economic advancement in the city is largely fictitious.⁶²

⁵⁷ Thieme T. A., 'Youth are redrawing the map: Temporalities and terrains of the hustle economy in Mathare, Nairobi' in *Africa*, 91(1), Cambridge University Press, 2021, 35.

⁵⁸ Chaudhuri S., 'Rural-urban migration, informal sector, urban unemployment and development policies, a theoretical analysis' 41(1) SSRN Electronic Journal, 2002, 139.

⁵⁹ Macharia J, 'The Urban-Rural Unemployment Gap in Kenya' unpublished, University of Nairobi, Nairobi, 2014, 15.

⁶⁰ Thieme T. A., 'Youth are redrawing the map, 35.

⁶¹ Chaudhuri S., 'Rural-urban migration, informal sector, urban unemployment and development policies, a theoretical analysis, 140.

⁶² Lando P J, 'An Investigation into the Connection Between High Youth Unemployment and Increased Migration to the Gulf Region, 16.

Disheartened by the challenges of urban life, many individuals look to international migration as a way out. The KSA becomes a particularly attractive destination due to its perceived wealth and stories of financial success shared by returnees or promoted by recruitment agencies. These narratives often present migration to the KSA as a pathway to financial stability, although without highlighting the risks involved. Urban migrants, already burdened by the pressures of supporting families in rural areas and meeting societal expectations of success, find themselves with limited options. When urban opportunities fail, migrating to the KSA appears to be the only viable escape from poverty and economic stagnation.⁶³

However, the transition to international migration often leads to even greater exploitation. For many KDW in the KSA, the conditions they face mirror or worsen the hardships they experienced in urban Kenya. The Kafala sponsorship system, which governs migrant workers in the region, exposes them to abusive work environments where long hours, physical and emotional abuse, and unpaid wages are common. Employers wield significant power over workers, controlling their legal status and personal freedoms, which deepens their vulnerability.⁶⁴ Moreover, many workers in the KSA are isolated by language barriers, cultural differences, and the remote nature of their workplaces, leaving them with little recourse against exploitation. The promises of financial success that motivated their migration are often replaced by harsh realities of servitude and abuse.⁶⁵

This cyclical process of migration, from rural to urban areas and eventually to international destinations, reflects systemic socio-economic failures. Each stage is marked by growing disillusionment and vulnerability, culminating in the oppressive realities faced by KDW in the KSA. What begins as a hopeful pursuit of opportunity often ends in a cycle of hardship, exploitation, and broken dreams.

2.2.2 GOVERNMENT RUN SITE GIVING KENYANS ACCESS TO JOBS IN THE KSA

The Kenyan government, through initiatives like the National Employment Authority Integrated Management System (NEAIMS), indirectly contributes to domestic servitude by facilitating labour migration to the KSA. NEAIMS is an online platform that advertises various job

⁶³ Thieme T. A., 'Youth are redrawing the map', 35.

⁶⁴ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

⁶⁵ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

opportunities abroad, including roles such as housemaids, domestic workers, and cleaners, positions commonly linked to domestic servitude.⁶⁶ By creating this avenue for migration, the government provides an opportunity for vulnerable Kenyans, particularly those facing unemployment and poverty, to seek employment in foreign labour markets. The platform is operated by National Employment Authority (NEA) whose main objectives are advising and implementing employment policies, promoting and monitoring employment creation programs both locally and abroad, providing public employment services, and offering labour market information.

While this initiative aims to address domestic unemployment and foster economic empowerment through foreign remittances, it inadvertently exposes workers to significant risks.⁶⁷ The advertised roles often fall under the Kafala system in the KSA, a sponsorship arrangement that has been widely criticized for perpetuating exploitative labour practices. Under this system, workers frequently face restrictions on movement, unfair working conditions, and a lack of legal recourse, which are hallmarks of domestic servitude.⁶⁸ Despite the government's intention to create economic opportunities, the absence of robust mechanisms to safeguard migrant workers from exploitation leaves them vulnerable to abuse.

Furthermore, by normalizing roles like housemaids and domestic workers as viable career paths through official government platforms, the Kenyan state indirectly legitimizes and perpetuates systems that place its citizens in exploitative environments.⁶⁹ The lack of adequate pre-departure training, effective monitoring of workers' conditions abroad, and enforcement of bilateral agreements to protect migrant rights highlights a gap in the government's responsibility to its citizens. As a result, Kenyan workers in the KSA often find themselves trapped in exploitative conditions, unable to return home or seek help, thus experiencing modern-day servitude.

In providing an official platform like NEAIMS, the Kenyan government becomes a significant enabler of labour migration without adequately addressing the systemic issues tied to the

⁶⁶ National Employment Authority Integrated Management System (NEAIMS) – <https://neaims.go.ke/> on 3 October 2024.

⁶⁷ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

⁶⁸ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

⁶⁹ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

destination countries' labour policies. This facilitation, coupled with insufficient protections, makes the government an indirect contributor to the domestic servitude faced by many Kenyan workers abroad.

2.3 THE CONTRIBUTION OF THE STRUCTURAL FRAMEWORK IN THE KSA TO DOMESTIC SERVITUDE

2.3.1 INTEGRATION OF SHARIA LAW IN SAUDI LABOUR LAWS

An Overview of Sharia Law in Saudi Arabia

Sharia law, sourced from the Quran and the Sunnah (the teachings and practices of the Prophet Muhammad), forms the anchor of the Saudi legal system. It is not merely a set of religious guidelines but a comprehensive legal framework that governs both public and private life in the KSA. The principles of Sharia are deeply embedded in various aspects of governance and legislation, making it the primary source of law in the country.⁷⁰

In the KSA, Sharia law is the foundation upon which the entire legal system is built. The Saudi constitution itself is based on Sharia, with the Quran and Sunnah declared as the country's constitution. This means that all laws and regulations must align with Sharia principles, and any legislation that contradicts Sharia is considered void.⁷¹ This integration ensures that the legal and judicial decisions are consistent with Islamic teachings, reflecting the religious and cultural values of the nation.⁷²

Sharia-Compliant Labour Protections

Sharia law, as the foundation of the Saudi legal system, provides a framework for labour protections that emphasize justice, fairness, and the dignity of workers. These principles are derived from the Quran and the Sunnah, which guide the ethical and legal standards in Islamic

⁷⁰ AGSIW, 'Vision 2030 Has Transformed Saudi Arabia's Legal and Judicial Systems' Arab Gulf States Institute in Washington, 2024—<[AGSIW | Vision 2030 Has Transformed Saudi Arabia's Legal and Judicial Systems](#)> on 8 October 2024.

⁷¹ AGSIW, 'Vision 2030 Has Transformed Saudi Arabia's Legal and Judicial Systems' Arab Gulf States Institute in Washington, 2024—<[AGSIW | Vision 2030 Has Transformed Saudi Arabia's Legal and Judicial Systems](#)> on 8 October 2024.

⁷² -<[Microsoft Word - Introduction to the Saudi Legal and Court Systems - STANDARD DOCUMENT-22 .docx](#)>- on 10 November 2024.

societies. However, the implementation of these principles in Saudi labour laws has sometimes uncovered discrepancies between the ideal and the actual practices.

One of the core principles of Sharia law is the provision of fair wages. The Quran explicitly instructs that workers should be compensated justly for their labour: "Give full measure and full weight in justice".⁷³ This principle is intended to ensure that employees receive fair remuneration for their work, reflecting the value of their contributions.⁷⁴ In practice, Saudi labour laws mandate minimum wage standards and timely payment of salaries. However, there have been instances where migrant workers, KDW, have faced delays in payment or have been paid less than agreed upon.⁷⁵

Sharia law emphasizes the importance of safe and humane working conditions. The Prophet Muhammad said, "Your employees are your brothers. Give them to eat what you eat and give them to wear what you wear."⁷⁶ This hadith underscores the responsibility of employers to ensure the well-being of their workers. Saudi labour laws include provisions for workplace safety and health standards, aiming to protect workers from hazardous conditions.⁷⁷ Despite these regulations, reports of unsafe working environments, especially for KDW, indicate a gap between the legal framework and its enforcement.

Saudi labour laws stipulate that employment contracts must be written and specify the terms of employment, including job duties, salary, and working hours. However, some migrant workers have reported being coerced into signing contracts they do not fully understand because the contracts are in Arabic or having their contracts altered without their consent.⁷⁸

⁷³ The Quran, 6:152

⁷⁴ Red Learning, 'Delving into the Core Principles of Sharia Relevant to Labor Law,' Red Learning, February 22, 2024, <<https://redlearning.org/delving-into-the-core-principles-of-sharia-relevant-to-labor-law/>> on 4 November 2024.

⁷⁵ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 170.

⁷⁶ Centre for Labour Research, 'Sources of Islamic Law,' Islamic Labour Code, 2024, <<https://islamiclabourcode.org/sources-of-islamic-law/>> on 4 November 2024

⁷⁷ Meed S., 'What Exactly Is Sharia Law? Exploring the Principles, Misconceptions, and Modern Applications of Islamic Legal Teachings' Scientific Origin, November 26, 2024—<https://scientificorigin.com/what-exactly-is-sharia-law-exploring-the-principles-misconceptions-and-modern-applications-of-islamic-legal-teachings> on 4 November 2024.

⁷⁸ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 171

Sharia law prohibits the exploitation of workers and mandates their fair treatment. The Quran and Sunnah advocate for the dignity of labour, condemning practices such as forced labour and discrimination.⁷⁹ Saudi labour laws aim to protect workers from exploitation through regulations on working hours, rest periods, and prohibitions against forced labour. Nevertheless, the kafala system has been criticized for creating conditions that can lead to exploitation, as it ties workers' legal status to their employers, limiting their ability to change jobs or seek redress.

Sharia law provides mechanisms for resolving disputes between employers and employees in a fair and just manner. Mediation and arbitration are preferred methods, aiming to achieve reconciliation and preserve relationships. Saudi labour laws include provisions for labour dispute resolution through specialized committees and courts. However, migrant workers often face barriers in accessing these mechanisms due to language differences, lack of legal knowledge, and fear of retaliation.⁸⁰

Sharia law provides a comprehensive framework for labour protections that emphasize justice, fairness, and the dignity of workers, the implementation of these principles in Saudi labour laws has faced challenges. Disparities between the ideal and the actual practices highlight the need for continued reforms and stronger enforcement to ensure that all workers, particularly vulnerable migrant workers, are treated in accordance with the ethical standards set by Sharia.

2.3.2 THE KAFALA SYSTEM AND ITS LEGAL FRAMEWORK

Definition and Origins of Kafala

The kafala system is a legal framework used in many Arab Gulf countries, including the KSA, to regulate the relationship between migrant workers and their employers. Under this system, a migrant worker's legal status is tied to their employer (*makful*), who acts as their sponsor (*kafil*). The sponsor is responsible for the worker's visa and legal residency, proficiently controlling their ability to enter, work, and exit the country.⁸¹

⁷⁹ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 163.

⁸⁰ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

⁸¹ Council on Foreign Relations, 'What Is the Kafala System?' CFR, 2024—<https://www.cfr.org/background/what-kafala-system> on 7 November 2024.

The term ‘kafala’ emanates from Islamic jurisprudence, where it traditionally referred to the adoption or guardianship of a child. In the context of labour, the concept was adapted to mean sponsorship, where the sponsor assumes responsibility for the migrant worker.⁸² The modern kafala system emerged in the early 20th century, particularly in the Gulf states, to meet the growing demand for labour in rapidly developing economies. Initially, it was designed to regulate the treatment of foreign workers in industries such as pearl diving and later expanded to other domains as the region's economies grew.⁸³

Historically, the kafala system was justified within the context of Sharia law as a means of ensuring accountability and protection for migrant workers. The system was intended to provide a structured and regulated environment where sponsors would be accountable for the welfare and well-being of the workers under their care. This included ensuring that workers had adequate living conditions, fair wages, and protection from exploitation.⁸⁴

Sharia law emphasizes the principles of justice, fairness, and the protection of human dignity. The kafala system was seen as a way to uphold these principles by creating a direct and personal responsibility for the *Kafil* towards the *Makful*. The *Kafil* was expected to act in the best interest of the *Makful*, much like a guardian, ensuring their safety and well-being. However, over time, the system has been criticized for creating a significant power imbalance between employers and workers, leading to widespread exploitation and abuse.⁸⁵

The kafala system expanded significantly during the oil boom of the 1970s, when Gulf countries experienced rapid economic growth and needed a large influx of foreign labour to support their development projects.⁸⁶ The system allowed these countries to manage the flow of migrant workers efficiently, ensuring that they could meet labour demands without granting permanent residency or citizenship to foreign workers. This was particularly important in maintaining the demographic balance and protecting the interests of local populations. Despite its initial purposes,

⁸² Council on Foreign Relations, ‘What Is the Kafala System?’ CFR, 2024—<https://www.cfr.org/background/what-kafala-system> on 7 November 2024

⁸³ Truluck E, ‘Using Islam to Protect the Rights of Migrant Workers’, 161.

⁸⁴ Ddumba-Nyanzi I, ‘An Introduction to Kafalah’ UNICEF, 2023—<https://www.unicef.org/esa/media/12451/file/An-Introduction-to-Kafalah-2023.pdf> on 8 November 2024.

⁸⁵ Truluck E, ‘Using Islam to Protect the Rights of Migrant Workers’, 158.

⁸⁶ Truluck E, ‘Using Islam to Protect the Rights of Migrant Workers’, 163.

the kafala system has faced increasing criticism for its role in facilitating labour exploitation. Workers under the kafala system often face constraints on their freedom of movement, inability to change employers without permission, and vulnerability to various forms of abuse. These issues have led to calls for reform and the implementation of more robust legal protections for migrant workers and in our case KDW.

The Kafala system was historically justified within the context of Sharia law as a means of ensuring the protection and welfare of migrant workers. However, its evolution and implementation have revealed significant shortcomings.

Legal Status of Kafala

The kafala system, which regulates the relationship between migrant workers and their employers in Saudi Arabia, has undergone several reforms over the years. Despite these changes, the core practices of the system have largely remained intact, continuing to impact the lives of millions of migrant workers. In 2000, Saudi Arabia officially removed the term "kafala" from its laws and replaced it with language referring to contractual relationships between employers and employees.⁸⁷ This change was part of an effort to modernize the labour system and address international criticism of the kafala system's exploitative nature. However, while the terminology changed, the core dynamics of the system did not. Employers retained significant control over their workers, including the authority to renew or terminate their residency and work permits.⁸⁸

Despite the 2000 reforms, the practices associated with the kafala system persisted. Employers continued to have the authority to seize workers' passports, restrict their movement, and control their ability to change jobs or leave the country. This control often led to situations where workers were vulnerable to exploitation and abuse, as they were dependent on their employers for their legal status and livelihood.⁸⁹ In recent years, the KSA has introduced further reforms aimed at improving the conditions for migrant workers. In 2021, the Ministry of Human Resources and

⁸⁷ International Labour Organization, 'Reform of the Kafala (Sponsorship) System' ILO, 2024—<https://webapps.ilo.org/dyn/migpractice/docs/132/PB2.pdf>—on 8 November 2024.

⁸⁸ Al Jazeera, 'Saudi Arabia's Long-Awaited Kafala Reform Goes Into Effect' Al Jazeera, March 14, 2021—<https://www.aljazeera.com/news/2021/3/14/saudi-arabias-long-awaited-kafala-reform-goes-into-effect>—on 8 November 2024.

⁸⁹ Human Rights Watch, 'Saudi Arabia: Labor Reforms Insufficient' Human Rights Watch, March 25, 2021—<https://www.hrw.org/news/2021/03/25/saudi-arabia-labor-reforms-insufficient>—on 7 November 2024.

Social Development announced significant changes to the kafala system. These reforms included allowing workers to change jobs without their employer's permission upon the expiry of their contract and removing the requirement for an exit visa to depart the country.⁹⁰ On top of that, provisions were made for workers who were not offered work contracts or had not been paid their salaries.⁹¹

Despite these reforms, significant challenges remain. The new regulations still require workers to submit a request to the Ministry of Human Resources and Social Development (MHRSD) to exit the Kingdom, and the employer is notified electronically of the worker's departure. This process can still be hindered by employers, and the reforms exclude certain categories of workers, such as those on short-term visas. Furthermore, the power imbalance between employers and workers continues to pose a risk of exploitation.

The kafala system's legal framework has profound implications for migrant workers, particularly those in vulnerable positions such as KDW. The system's oversight mechanisms often lead to situations where workers are unable to seek legal recourse or change their employment conditions without fear of retaliation. This has resulted in widespread reports of abuse, including non-payment of wages, excessive working hours, and physical and psychological mistreatment. While Saudi Arabia has made efforts to reform the kafala system, the core practices that place significant control in the hands of employers remain largely unchanged. These ongoing issues highlight the need for continued reforms to ensure that the rights and protections of migrant workers are fully sustained.

2.3.3 THE IMPACT OF THE KAFALA SYSTEM ON KDW IN THE KSA

Working Conditions and Exploitation

KDW in the KSA face challenging working conditions under the kafala system, which often leads to exploitation and abuse. The system, which links workers' legal status to their employers, creates

⁹⁰ Alghalib F. L., 'Sponsorship Reforms in Saudi Arabia: Converging Toward International Labor Standards' King Faisal Center for Research and Islamic Studies, February 2021—<https://www.kfcris.com/pdf/130efbcff5567391146fc2bc9002efa4603b6b4891667.pdf> ->on 9 November 2024.

⁹¹ Begum R., 'What Will it Take for Saudi Arabia to Abolish Abusive Sponsorship System?' Human Rights Watch, October 30, 2020—<https://www.hrw.org/news/2020/10/30/what-will-it-take-saudi-arabia-abolish-abusive-sponsorship-system> ->on 7 November 2024.

a significant power imbalance that leaves workers vulnerable to various forms of mistreatment.⁹² One of the most common issues faced by KDW is the requirement to work excessively long hours. Many workers report working 12 to 16 hours a day, seven days a week, with little to no rest. This incessant schedule leaves them physically and mentally exhausted, with no time for personal rest or recreation.⁹³ The lack of regulated working hours means that employers can demand continuous labour without providing adequate breaks, leading to severe fatigue and health problems.

In addition to long working hours, KDW often have constrained personal time and rest periods. Many live-in domestic workers are expected to be on call at all times, making it difficult for them to have continuous sleep or personal time. This constant availability requirement can lead to chronic sleep deprivation and stress.⁹⁴ The absence of clear regulations on rest periods exacerbates this issue, as workers have no legal recourse to demand adequate rest. Compensation for KDW under the kafala system is often inadequate and inconsistent. Many workers report being paid less than what was promised in their contracts, with some receiving no payment at all for prolonged durations.⁹⁵ Wage theft is a significant issue, where employers withhold salaries as a form of control or punishment. Additionally, the lack of a standardized minimum wage for KDW means that their earnings are often inadequate to cover their basic needs and support their families back home.

Employers frequently confiscate workers' passports, restricting their freedom of movement and making it difficult for them to leave abusive situations.⁹⁶ This practice effectively traps workers in their employers' homes, as they cannot travel or seek help without their identification documents. The inability to move freely or change employers without permission further deepens their dependency and vulnerability.

Reports of physical and psychological abuse are alarmingly common among KDW in the KSA. Workers have recounted experiences of being beaten, verbally abused, and subjected to degrading

⁹² Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 168.

⁹³ Mwangi W, 'The Impact of Working Conditions Under the Kafala System on The Experience of Kenyan Migrant Domestic Workers in Saudi Arabia' unpublished, Daystar University, Nairobi, 2023, 24.

⁹⁴ Migrant Workers Action, "A Search for Livelihood Turned into Forced Labour: Experiences of Kenyan Migrant Domestic Workers in Lebanon," December 2023, 31.

⁹⁵ Tayah, M.-J. L., 'Claiming rights under the kafala system' openDemocracy, 2017.

⁹⁶ Mwangi W, 'The Impact of Working Conditions Under the Kafala System on The Experience of Kenyan Migrant Domestic Workers in Saudi Arabia, 24.

treatment by their employers.⁹⁷ The power dynamics under the kafala system make it hard for workers to report abuse or seek justice, as they fear retaliation or deportation. The kafala system's structure makes it difficult for KDW to access legal recourse. Language barriers, lack of knowledge about their rights, and fear of employer retaliation prevent many workers from seeking help. Even when they do, the legal processes can be lengthy and biased in favour of employers. This lack of efficient legal protection leaves workers with little hope of escaping abusive conditions or obtaining justice.

The working conditions faced by KDW under the kafala system in the KSA are characterized by long hours, lack of rest, inadequate compensation, restricted movement, and exposure to abuse.⁹⁸ These conditions highlight the urgent need for reforms to protect the rights and well-being of KDW.

Legal and Social Challenges

KDW in the KSA face numerous legal and social challenges under the kafala system, which aggravates their vulnerability to exploitation and abuse. These challenges include limited access to legal recourse, language barriers, and social isolation. One of the most fundamental legal challenges faced by KDW is the limited access to legal recourse. The kafala system grants employers substantial control over their workers, including the ability to terminate their employment and revoke their legal status. This power imbalance makes it difficult for workers to challenge unfair treatment or seek justice for abuses.⁹⁹ Many workers are unaware of their legal rights or how to access legal assistance. Even when they do seek help, the legal processes can be lengthy, costly, and biased in favour of employers. Additionally, the fear of retaliation, including deportation or further abuse, often deters workers from pursuing legal action.

Language barriers pose a significant obstacle for KDW in the KSA. Many workers do not speak Arabic, the primary language used in legal and administrative processes. This language gap makes it challenging for them to understand their employment contracts, communicate with authorities,

⁹⁷ Council on Foreign Relations, 'What Is the Kafala System?' CFR, 2024—<https://www.cfr.org/background/what-kafala-system> on 7 November 2024.

⁹⁸ Truluck E, 'Using Islam to Protect the Rights of Migrant Workers', 169.

⁹⁹ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, 2022.

or seek help when needed.¹⁰⁰ The absence of translation services and legal support in their native languages further complicates their ability to navigate the legal system and assert their rights.

Social isolation is another critical challenge faced by KDW. Many domestic workers live in their employers' homes, where they have limited opportunities to interact with others outside the household. This isolation can lead to feelings of loneliness, depression, and helplessness.¹⁰¹ The lack of social support networks makes it difficult for workers to share their experiences, seek advice, or find solace in the company of others facing similar challenges. Social isolation also means that abuses and exploitation often go unnoticed and unreported, as workers have few avenues to seek help or raise awareness about their quagmire.

KDW often face cultural and religious differences that can lead to misunderstandings and discrimination. The cultural norms and practices in the KSA may be vastly different from those in Kenya, leading to conflicts and difficulties in adjusting to the new environment. Additionally, religious intolerance can be a significant issue, as workers may face discrimination or pressure to conform to religious practices that differ from their own beliefs. The availability of support services for KDW in the KSA is limited. There are few safe houses or shelters for workers who escape abusive situations, and the Kenyan embassy and consulates often lack the resources to provide adequate assistance. The absence of comprehensive support services means that workers have limited options for seeking refuge, legal assistance, or repatriation in cases of severe abuse.

KDW in the KSA face significant legal and social challenges under the kafala system, including limited access to legal recourse, language barriers, social isolation, cultural and religious differences and lack of support services. Addressing these challenges requires comprehensive reforms and stronger enforcement of protections to ensure the rights and well-being of migrant workers.

2.4 CONCLUSION

This chapter has delved into the complex and often harsh realities faced by KDW in the KSA, providing a comprehensive examination of the socio-economic factors driving their migration and

¹⁰⁰ Human Rights Watch, 'Saudi Arabia: Labor Reforms Insufficient' Human Rights Watch, March 25, 2021— <<https://www.hrw.org/news/2021/03/25/saudi-arabia-labor-reforms-insufficient> >- on 7 November 2024.

¹⁰¹ Mwangi W, 'The Impact of Working Conditions Under the Kafala System on The Experience of Kenyan Migrant Domestic Workers in Saudi Arabia', 23.

the structural framework that exacerbates their vulnerability to domestic servitude. The exploration begins with the unemployment crisis in Kenya, a significant push factor compelling many to seek opportunities abroad. The lack of job prospects, coupled with economic pressures and societal expectations, drives individuals to migrate, often starting with a move from rural to urban areas before transitioning to international destinations like the KSA. This journey, fuelled by the hope of better financial prospects, frequently leads to disillusionment as workers encounter exploitative conditions that mirror or worsen their previous hardships.

Government-run platforms such as the NEAIMS, operated by NEA, play a role in facilitating this migration. While these platforms aim to provide regulated pathways for employment, their effectiveness in safeguarding workers' rights and well-being remains limited. The inadequacies of these systems highlight the need for stronger oversight and support mechanisms to protect migrant workers from exploitation.

Central to the discussion is the kafala sponsorship system, which ties workers' legal status to their employers, creating a significant power imbalance. Despite reforms intended to mitigate its exploitative nature, the core practices of the kafala system persist, perpetuating a cycle of servitude and abuse. KDW under this system face long working hours, lack of rest, inadequate compensation, and exposure to physical and psychological abuse. These conditions are compounded by legal and social challenges, including limited access to legal recourse, language barriers, and social isolation.

In conclusion, this chapter has laid the groundwork for understanding the socio-economic realities and systemic challenges faced by KDW in the KSA. The insights gained underscore the critical need for robust policy interventions and comprehensive reforms to address the systemic issues within the kafala system.

CHAPTER 3: ASSESSMENT OF KENYA’S LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 INTRODUCTION

This chapter aims to evaluate the current legal framework governing labour migration from Kenya to the KSA. It will analyse existing laws and regulations, assess their effectiveness in protecting KDW abroad, and highlight any gaps or shortcomings that contribute to ongoing exploitation.

The chapter is organized as follows: Firstly, it provides an overview of the existing legal frameworks, detailing the current laws and regulations governing labour migration from Kenya to the KSA, including key policies and agreements. Afterwards, it examines the performance of these legal protections, analysing how these laws and regulations are implemented, and presenting case studies or examples of their effectiveness in safeguarding KDW. Following this, the chapter identifies gaps and shortcomings in the current legal frameworks, discussing how these drawbacks contribute to the exploitation and abuse of KDW. It then examines the role of governmental and non-governmental organizations, examining the efforts and initiatives of Kenyan government agencies and NGOs in supporting and protecting KDW.

Legal frameworks play a vital role in labour migration by establishing the rights and protections for workers, setting standards for employment conditions, and providing mechanisms for addressing grievances and disputes. In the context of KDW in the KSA, a robust legal framework is essential to ensure their safety, dignity, and well-being, and to prevent domestic servitude. This chapter will explore how well the current legal frameworks meet these needs.

3.2 OVERVIEW OF EXISTING LEGAL FRAMEWORKS

3.2.1 CURRENT LAWS AND REGULATIONS GOVERNING LABOUR MIGRATION FROM KENYA TO THE KSA

The legal framework governing labour migration from Kenya to the KSA is shaped by a combination of national laws and international conventions. This section provides a detailed description of these laws and regulations, underscoring their key provisions and the mechanisms they establish to regulate and protect the migration process.

National Laws and Regulations in Kenya

Kenya has established several laws and regulations aimed at governing labour migration and protecting its citizens working abroad. The chief legislative instruments include the Employment Act, 2007, the Labour Institutions Act, 2007, the Labour Relations Act, 2007 and the National Employment Authority Act, 2016.

The Employment Act, 2007 provides the general framework for employment relations in Kenya, including provisions on the rights and obligations of employers and employees. It sets out minimum standards for working conditions, wages, and dispute resolution mechanisms.¹⁰² The Labour Institutions Act, 2007 establishes various institutions responsible for labour administration, including the National Labour Board and the Labour Commissioner. These institutions play a crucial role in overseeing labour migration and ensuring compliance with labour standards.¹⁰³ The Labour Relations Act, 2007 governs the relationship between employers, employees, and trade unions. It includes provisions on collective bargaining, dispute resolution, and the protection of workers' rights.¹⁰⁴ The National Employment Authority Act, 2016 established the National Employment Authority (NEA), which is tasked with promoting employment opportunities and regulating private employment agencies. The NEA is responsible for licensing and monitoring recruitment agencies that facilitate labour migration.¹⁰⁵

International Conventions

Kenya is a signatory to several international conventions that set standards for the protection of migrant workers. These conventions include International Labour Organization (ILO) Conventions and United Nations (UN) Conventions. Kenya has ratified various ILO conventions, such as the Migration for Employment Convention¹⁰⁶ which requires ratifying countries to facilitate the migration process and ensure that migrant workers receive equal treatment in terms of employment, social security, and living conditions. Additionally it has ratified the Migrant Workers Convention that focuses on combating abusive conditions and promoting equality of opportunity and treatment for migrant workers and obligates countries to take measures against

¹⁰² Section 3, Employment Act (No. 11 of 2007).

¹⁰³ Section 7, Labour Institutions Act (No. 12 of 2007).

¹⁰⁴ Section 3, Labour Relations Act (No. 14 of 2007).

¹⁰⁵ Section 8, National Employment Authority Act (No. 3 of 2016).

¹⁰⁶ Article 1, Migration for Employment Convention (Revised 1949) Treaty Series No. 97.

illegal employment and ensure that migrant workers are not exploited.¹⁰⁷ These conventions establish guidelines for the fair treatment and protection of migrant workers.

Kenya is also a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which provides comprehensive protections for migrant workers and their families, including the right to fair wages, safe working conditions, and protection from exploitation and abuse. Specific articles include Article 10, which states that migrant workers and members of their family shall not be subjected to torture or to cruel, inhuman, or degrading treatment or punishment; Article 25, which ensures that migrant workers enjoy the same treatment as nationals of the State of employment in regards to remuneration and other conditions of work; Article 26, which guarantees the right to join trade unions and other associations; and Article 43, which provides for equal access to educational institutions and services. These international conventions address key issues faced by KDW in the KSA, such as exploitation, abuse, safe working conditions, equal treatment, and access to information and legal assistance.¹⁰⁸

By examining these national laws and international conventions, this section provides a thorough overview of the legal framework governing labour migration from Kenya to the KSA. This framework is designed to regulate the migration process, protect the rights of KDW, and ensure their well-being while working abroad. However, as subsequent sections will explore, there are significant gaps and shortcomings in these frameworks that need to be addressed to effectively combat domestic servitude.

3.2.2 KEY POLICIES AND AGREEMENTS BETWEEN KENYA AND THE KSA

Kenya and the KSA have established several key policies and agreements to regulate the recruitment and employment of KDW in the KSA. These agreements are designed to ensure the rights and welfare of KDW and to provide a framework for their protection.

Bilateral agreements

¹⁰⁷ Article 9, Migrant Workers (Supplementary Provisions) Convention (1975) Treaty Series No. 143.

¹⁰⁸ Article 1, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) Treaty Series No. 2220.

Kenya and the KSA have signed a Memorandum of Understanding (MoU) to enhance labour cooperation between the two countries. This MoU outlines the responsibilities of both governments in regulating the recruitment and employment of KDW in the KSA. It includes provisions on the recruitment process, employment contracts, dispute resolution mechanisms, and the roles of government agencies in monitoring and enforcing these agreements.¹⁰⁹

They also have bilateral agreements that specify the procedures for recruiting and placing KDW in the KSA. These procedures are designed to ensure that recruitment is conducted transparently and ethically. They involve the collaboration of government agencies and licensed private recruitment firms to facilitate the safe and legal migration of workers.¹¹⁰ One of the critical components of the bilateral agreements is the requirement for standard employment contracts. These contracts must be written in a language understood by the worker and include details on wages, working hours, rest periods, and other terms of employment. The standardization of contracts helps to prevent misunderstandings and exploitation by ensuring that both parties are aware of their rights and obligations.¹¹¹ The agreements also establish mechanisms for resolving disputes between workers and employers. These mechanisms often involve the intervention of consular services and labour attachés from the Kenyan embassy in the KSA. The aim is to provide a means for workers to seek redress in case of grievances and to ensure that disputes are resolved fairly and promptly.¹¹²

Government Initiatives and Programs

The Kenyan government, in collaboration with Saudi authorities, has implemented pre-departure training and orientation programs for workers. These programs are designed to educate workers about their rights, the working conditions they can expect, and the cultural norms of the KSA. The

¹⁰⁹ MFA Press, 'Kenya and Saudi Arabia Sign Agreement to Enhance Cooperation' Foreign & Diaspora Affairs, 13 March 2022—<[KENYA AND SAUDI ARABIA SIGN AGREEMENT TO ENHANCE COOPERATION – FOREIGN & DIASPORA AFFAIRS | KENYA](#)> on 13 November 2024.

¹¹⁰ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 1.

¹¹¹ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 4.

¹¹² Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 2.

training aims to prepare workers for their new environment and to equip them with the knowledge needed to protect themselves from exploitation.¹¹³

Both governments have established monitoring and support services to oversee the welfare of KDW in the KSA. These services include regular inspections of workplaces, the provision of helplines for workers to report abuse, and the establishment of shelters for workers who need to escape abusive situations. The goal is to ensure that workers have access to support and protection throughout their employment.¹¹⁴ For workers returning to Kenya, the government has developed reintegration programs to help them transition back into their home country. These programs provide financial assistance, counselling, and job placement services to support returning workers in rebuilding their lives and reintegrating into their communities.¹¹⁵

By implementing these key policies and agreements, Kenya and the KSA aim to create a safer and more regulated environment for KDW. These measures are intended to protect workers' rights, ensure fair treatment, and provide mechanisms for addressing grievances and disputes. However, as subsequent sections will explore, there are still significant challenges and gaps that need to be addressed to fully protect the rights and well-being of KDW in the KSA.

3.3 EFFECTIVENESS OF LEGAL PROTECTIONS

3.3.1 ANALYSIS OF HOW THESE LAWS AND REGULATIONS ARE IMPLEMENTED

The effectiveness of the legal protections for KDW in the KSA depends on the implementation and enforcement of the laws and regulations established by both Kenya and the KSA. This section analyses how these legal frameworks are put into practice and evaluates their success in safeguarding the rights and well-being of KDW.

Implementation of National Laws and Regulations

Kenya has enacted several laws aimed at protecting its citizens working abroad, including the Employment Act, the Labour Institutions Act, the Labour Relations Act, and the National

¹¹³ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 2.

¹¹⁴ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 4.

¹¹⁵ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 4.

Employment Authority Act. These laws provide a comprehensive framework for regulating labour migration and ensuring the rights of workers. However, the effectiveness of these laws depends on their implementation and enforcement.¹¹⁶

NEA is responsible for licensing and monitoring private recruitment agencies that facilitate the migration of KDW to the KSA. While the NEA has established guidelines and standards for these agencies, there have been challenges in ensuring compliance. Reports of unlicensed and underhanded agencies exploiting workers highlight gaps in the monitoring and enforcement mechanisms.¹¹⁷ The Kenyan government has implemented pre-departure training programs to educate workers about their rights and the conditions they can expect in the KSA. These programs are fundamental for preparing workers and reducing their vulnerability to exploitation. However, the reach and quality of these training sessions vary, and not all workers receive exhaustive orientation.¹¹⁸

Enforcement of Bilateral Agreements

The bilateral agreements between Kenya and the KSA outline specific measures for protecting KDW, including standard employment contracts, dispute resolution mechanisms, and monitoring of working conditions. The effectiveness of these agreements depends on the commitment of both governments to enforce the stipulated provisions. The requirement for standard employment contracts is a critical measure for protecting workers' rights. These contracts should clearly outline wages, working hours, rest periods, and other terms of employment. However, there have been instances where employers do not adhere to the contract terms, leading to exploitation and abuse.¹¹⁹

The bilateral agreements establish mechanisms for resolving disputes between workers and employers, involving consular services and labour attachés. While these mechanisms provide a

¹¹⁶ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 4.

¹¹⁷ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 2.

¹¹⁸ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 3.

¹¹⁹ Mukobi B, 'Access to Justice for Kenyan Emigrant Workers: The Plight of Kenyan Domestic Workers in Saudi Arabia' unpublished, University of Nairobi, Nairobi, 2021, 45.

formal avenue for addressing grievances, their effectiveness is often limited by bureaucratic delays, lack of awareness among workers, and potential bias in favour of employers.¹²⁰

Role of Government and Non-Governmental Organizations

Both the Kenyan and Saudi governments, along with non-governmental organizations (NGOs), play a crucial role in implementing and enforcing legal protections for KDW. The Kenyan government has established various initiatives to support and protect its workers abroad, including helplines, shelters, and reintegration programs. These initiatives are vital for providing immediate assistance to workers in distress and facilitating their safe return home. However, the effectiveness of these initiatives is often hampered by limited resources and coordination challenges. Increasing funding and improving coordination between government agencies can enhance the support provided to workers.¹²¹

NGOs play a significant role in advocating for the rights of migrant workers and providing direct support services. They offer legal assistance, counselling, and emergency aid to workers facing exploitation. Collaborating with NGOs and leveraging their expertise can strengthen the overall protection framework for KDW.¹²²

While the legal frameworks established by Kenya and the KSA provide a foundation for protecting KDW, their effectiveness is contingent upon robust implementation and enforcement. Addressing the gaps in monitoring, compliance, and support services is essential for ensuring that the rights and well-being of KDW are adequately safeguarded.

3.3.2 CASE STUDIES OF THE EFFECTIVENESS OF THE ALREADY ESTABLISHED LEGAL PROTECTIONS

The effectiveness of legal protections for KDW in the KSA can be illustrated through various studies and investigations. These studies highlight both the successes and challenges in

¹²⁰ Mukobi B, 'Access to Justice for Kenyan Emigrant Workers: The Plight of Kenyan Domestic Workers in Saudi Arabia' unpublished, University of Nairobi, Nairobi, 2021, 45.

¹²¹ Sweileh M, 'Analysis and Mapping of Global Research Publications on Migrant Domestic Workers' 12 (1) Comparative Migration Studies, 2024, 15.

¹²² Dumoulin C, 'The Kafala System: Incremental Reform is Not Enough to Stop Abuse Against Migrant Domestic Workers' International Law and Policy Brief, 12 July 2021—<[The Kafala System: Incremental Reform is Not Enough to Stop Abuse Against Migrant Domestic Workers | International Law and Policy Brief](#)>- on 13 December 2015.

implementing these protections. An investigation by the Commission on Administrative Justice (CAJ) in Kenya revealed systemic gaps in the existing labour policies and processes related to the recruitment and management of KDW in the KSA. The investigation was prompted by a myriad of reports of mistreatment and abuse. The findings highlighted several key issues, including passport confiscation, physical and sexual abuse, sleep and food deprivation, labour exploitation, movement restriction, and psychological abuse.¹²³ The investigation underscored the need for a more robust legal and enforcement framework to protect workers effectively.

A study on bilateral labour agreements between Kenya and Gulf states, including the KSA, examined the impact of these agreements on the human security of migrant workers. The study found that while the agreements included provisions for standard employment contracts and dispute resolution mechanisms, their implementation was inconsistent. Many workers reported that their contracts were not honoured, and they faced difficulties in accessing legal recourse.¹²⁴ The study recommended enhancing the enforcement of these agreements and improving the support services provided to workers.

NGOs have played a significant role in advocating for the rights of KDW in the KSA. For instance, Haki Africa, a Kenyan NGO, has received numerous complaints of abuse from workers and has been actively involved in providing support and advocacy. The organization has highlighted the need for stricter vetting of recruitment agencies and better monitoring of working conditions.¹²⁵

The Kenyan government has implemented several schemes to protect its workers abroad, including pre-departure training and the establishment of shelters for workers in distress. However, the effectiveness of these initiatives has been mixed. While pre-departure training has helped some workers understand their rights and prepare for their roles, the quality and reach of these programs

¹²³Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 1.

¹²⁴Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 1.

¹²⁵ Haki Africa, 'Modern-day slavery: Kenyan domestic workers tell of abuse in Saudi Arabia' Business & Human Rights Resource Centre, 27 September 2022—<<https://repository.daystar.ac.ke/server/api/core/bitstreams/9cd07f09-76e7-4503-96a1-cd05b23a0272/content> - Search-> on 13 November 2024.

vary. Additionally, the limited number of shelters and the vast geographical area of the KSA pose challenges in providing timely assistance to all workers.¹²⁶

These illustrations show that while there are frameworks and initiatives in place to protect KDW in the KSA, their proficiency is often hindered by gaps in implementation and enforcement. Strengthening these mechanisms and ensuring consistent application of legal protections are imperative steps towards improving the safety and well-being of KDW.

3.4 EXAMINATION OF THE ROLE OF KENYAN GOVERNMENT AGENCIES AND NGOS IN SUPPORTING AND PROTECTING KDW

The protection and support of KDW in the KSA involve coordinated efforts by both Kenyan government agencies and NGOs. These entities play crucial roles in advocating for workers' rights, providing essential services, and ensuring that legal frameworks are effectively implemented.

Government Efforts

The NEA regulates private employment agencies, ensuring compliance with recruitment standards. Despite its efforts, the NEA faces challenges such as limited resources and capacity, which hinder its ability to effectively oversee the recruitment process and protect workers from exploitation.¹²⁷

The Ministry of Labour and Social Protection formulates policies and oversees pre-departure training programs to educate workers about their rights and conditions abroad.¹²⁸ While essential, these programs often lack comprehensive coverage, leaving workers inadequately prepared. The Kenyan Embassy in the KSA provides consular services, including legal assistance, repatriation, and emergency aid.¹²⁹ However, staff shortages, inadequate funding, and logistical challenges limit the effectiveness of these services. Additionally labour attachés monitor the welfare of Kenyan

¹²⁶ Castelier S, 'Kenya: NGO urges govt. to take more measures, incl. stringent regulation of recruitment agencies, to stem rising abuse of immigrant workers in the Gulf' Business & Human Rights Resource Centre, 27 September 2022—<[Kenya: NGO urges govt. to take more measures, incl. stringent regulation of recruitment agencies, to stem rising abuse of immigrant workers in the Gulf - Business & Human Rights Resource Centre](#)> on 15 November 2015.

¹²⁷ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 1.

¹²⁸ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 1.

¹²⁹ Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 2.

workers and address grievances.¹³⁰ However, their effectiveness is limited by the vast geographical area they cover and staff shortages.

Role of NGOs

Haki Africa advocates for the rights of KDW in the KSA, providing legal assistance, counselling, and emergency aid.¹³¹ However, the impact of these initiatives is limited by the scale of the problem and available resources. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) supports migrant workers through advocacy, legal assistance, and training programs.¹³² While beneficial, the union faces challenges in reaching all affected workers and ensuring consistent support.

Moreover, the Global Alliance Against Traffic in Women (GAATW) works to combat human trafficking and protect migrant workers' rights. In collaboration with local organizations like KUDHEIHA, GAATW conducts research, provides support services, and advocates for policy reforms.¹³³ While significant strides have been made by both government agencies and NGOs in supporting and protecting KDW in the KSA, challenges remain. Strengthening the capacity of these entities and enhancing coordination between them are essential steps towards improving the welfare of KDW.

3.5 CONCLUSION

This chapter has provided a detailed assessment of the legal framework governing labour migration from Kenya to the KSA, highlighting several key observations. Kenya has established various national laws and regulations, including the Employment Act, the Labour Institutions Act, the Labour Relations Act, and the National Employment Authority Act, to manage labour migration and protect its citizens working abroad. Bilateral agreements between Kenya and the KSA also outline measures for recruitment, employment contracts, and dispute resolution. However, the

¹³⁰Commission on Administrative Justice, Brief on Systemic Investigation into the Plight of Kenyan Migrant Domestic Workers in the Kingdom of Saudi Arabia, September 2022, 2.

¹³¹ -<[Experts of the Committee on the Elimination of Racial Discrimination Commend Kenya's Legal Aid Initiatives, Ask about Indigenous Land Rights and Reported Abuse of Kenyan Migrant Workers Abroad | OHCHR](#)> on 16 November 2024.

¹³² -<[JOURNEY TOWARDS ACHIEVING SDG 8 – DECENT WORK FOR ALL WORKERS – Kudheihha](#)> on 16 November 2024.

¹³³ -<[Strengthening Intersectional Analyses and Responses to Labour Migration - The Global Alliance Against Traffic in Women \(GAATW\)](#)> on 16 November 2024.

effectiveness of these legal protections has been inconsistent due to gaps in enforcement, monitoring, and support services. Issues such as unlicensed recruitment agencies, inadequate pre-departure training, and limited support for workers in the KSA have left KDW vulnerable to exploitation and abuse.

Significant shortcomings exist within the current legal frameworks. These include the inadequate enforcement of bilateral agreements, insufficient legal and institutional capacity, limited pre-departure training, and barriers to accessing legal recourse. Furthermore, the lack of comprehensive support services exacerbates the challenges faced by KDW. Both the Kenyan government and NGOs have crucial roles in addressing these issues. Government efforts include regulating recruitment agencies, offering pre-departure training, and providing consular support, while NGOs provide legal assistance, counselling, and advocacy for workers' rights. However, limited resources and poor coordination have hindered the effectiveness of these efforts.

Robust legal frameworks are vital to safeguarding the rights and dignity of KDW in the KSA. The consistent implementation and enforcement of comprehensive laws and bilateral agreements are necessary to ensure that workers are treated fairly and their rights are upheld. Addressing the existing gaps requires enhancing government capacity for monitoring and enforcement, improving pre-departure training, and establishing comprehensive support mechanisms for workers in distress. By fostering collaboration between Kenyan and Saudi authorities and strengthening partnerships with NGOs, both governments can contribute to a safer and more equitable environment for migrant workers. Ultimately, the well-being and safety of KDW depend on the collective commitment to uphold their rights and protect them from domestic servitude.

CHAPTER 4: COMPARATIVE ANALYSIS AND POLICY SOLUTIONS

4.1 INTRODUCTION

This chapter delves into a comparative analysis of international policies aimed at addressing domestic servitude. The primary focus is on identifying and evaluating policies from various countries to enhance the protections for KDW in the KSA. By examining these international strategies, the chapter aims to uncover effective measures that can be adapted and implemented to improve the working conditions and rights of KDW.

The objectives of this chapter are twofold. Firstly, it seeks to identify successful strategies and best practices from two other countries that have effectively tackled issues related to domestic servitude. Secondly, it aims to propose adaptable solutions that can be tailored to the Kenyan context, ensuring that the protections for KDW in the KSA are robust and comprehensive.

4.2 COMPARATIVE ANALYSIS OF INTERNATIONAL POLICIES

To ensure the relevance of the selected countries and policies to the Kenyan-Saudi context, several criteria were used. These include the effectiveness of the policies in protecting domestic workers, the relevance of the countries' experiences to the Kenyan-Saudi dynamic, the adaptability of the policies to the Kenyan context, and the comprehensive coverage of various aspects of domestic workers' rights, such as legal protection, social security, and working conditions.

4.2.1 PHILIPPINES

The Philippines has a comprehensive approach to protecting its domestic workers, both locally and abroad, through the Domestic Workers Act (*Batas Kasambahay*) and the Overseas Workers Welfare Administration (OWWA). The *Batas Kasambahay* provides extensive rights and protections for domestic workers, including mandatory written contracts, fair wages, and social security benefits. Specifically, Section 2 of the Act mandates that employers provide a written employment contract¹³⁴, while Section 24 ensures social security coverage for domestic workers.¹³⁵ Additionally, OWWA offers pre-departure orientation seminars, legal assistance, and

¹³⁴ Section 2, Domestic Workers Act (No. 10361 of 2013).

¹³⁵ Section 24, Domestic Workers Act (No. 10361 of 2013).

welfare services, ensuring that workers are well-prepared and supported throughout their employment abroad.¹³⁶

What makes the Philippines unique is its proactive approach to bilateral agreements with destination countries, including the KSA, to ensure the protection of its workers. These agreements facilitate cooperation between governments and provide mechanisms for addressing issues that may arise during employment.¹³⁷ Furthermore, the Philippines has integrated migration into its long-term development planning, recognizing the potential of Overseas Filipino Workers (OFWs) to contribute to national development upon their return.¹³⁸

4.2.2 BRAZIL

Brazil's Constitutional Amendment 72 (PEC das Domésticas), enacted in 2013, extends labour rights to domestic workers, ensuring they receive the same protections as other workers under Brazilian labour law. For Brazilian domestic workers employed overseas, the applicability of these rights depends on the bilateral agreements Brazil has with the host country. Key measures in the amendment include the right to a minimum wage, overtime pay, paid leave, social security benefits, and unemployment insurance. The amendment guarantees these rights, including a maximum workday of 8 hours and a 44-hour workweek.¹³⁹

Several factors contribute to the success of Brazil's policies. The Constitutional Amendment 72 provides a robust legal foundation that guarantees domestic workers' rights and protections. By including domestic workers in the social security system, Brazil ensures they have access to benefits such as retirement pensions, health insurance, and unemployment benefits. The Brazilian government has also conducted extensive awareness campaigns to inform domestic workers and employers about their rights and obligations under the new law.¹⁴⁰

¹³⁶ Section 6, Overseas Workers Welfare Administration Act (Republic Act No. 10801 of 2016).

¹³⁷ Albert J.R.G., Habitan M.T., Tabuga A.D., Vizmanos J.F.V., Muñoz M.S., Hernandez A.C., 'Long-Term Effects of Labor Migration in the Philippines: "Napakasakit, Kuya Eddie!"' Philippine Institute for Development Studies, PIDS Discussion Paper Series No. 2023-17, 2023, 24 -< [pidsdps2317.pdf](#) >- on 18 December 2024.

¹³⁸ Orbeta A.C. Jr., Abrigo M.R.M., 'Philippine Labour Migration in the Past 30 Years: Trends and Prospects' Philippine Institute for Development Studies, PIDS Discussion Paper Series No. 2009-33, 2009, 13-< [Philippine Labour Migration in the Past 30 Years: Trends and Prospects](#)>- on 18 December 2024.

¹³⁹ Article 7, Constitution of Brazil (2013).

¹⁴⁰ Article 7, Constitution of Brazil (2013).

Brazil's approach to domestic worker rights is notable for its comprehensive legal framework, which ensures that domestic workers receive equitable treatment and benefits.

4.2.3 COMPARISON WITH KENYA'S LABOUR MIGRATION MANAGEMENT BILL

This paper advocates for the implementation of the Labour Migration Management Bill but also recognises that the bill is not exhaustive. While Kenya's Labour Migration Management Bill focuses on regulating private employment agencies and safeguarding the rights of migrant workers¹⁴¹, it does not yet encompass the comprehensive support systems and bilateral agreements seen in the Philippines. Additionally, the bill does not explicitly integrate migration into long-term national development planning, as the Philippines has done.¹⁴²

Brazil goes beyond the Labour Migration Management Bill of Kenya by including domestic workers in the social security system, ensuring they have access to benefits such as retirement pensions, health insurance, and unemployment benefits. The Brazilian government has also conducted extensive awareness campaigns to inform domestic workers and employers about their rights and obligations under the new law.¹⁴³

Brazil's approach, with its robust legal framework and inclusion of domestic workers in the social security system, provides a higher level of protection and support compared to the provisions in Kenya's Labour Migration Management Bill. The extensive awareness campaigns conducted by Brazil also ensure that both workers and employers are well-informed about their rights and obligations, which is crucial for effective implementation and compliance.

By learning from the comprehensive and proactive approaches of the Philippines and Brazil, Kenya can enhance its Labour Migration Management Bill to provide more robust protections and support for its domestic workers.

¹⁴¹ Section 17, Labour Migration Management Bill (No. 16 of 2024).

¹⁴² Orbeta A.C. Jr., Abrigo M.R.M., 'Philippine Labour Migration in the Past 30 Years: Trends and Prospects' Philippine Institute for Development Studies, PIDS Discussion Paper Series No. 2009-33, 2009, 13-< [Philippine Labour Migration in the Past 30 Years: Trends and Prospects](#)>- on 18 December 2024.

¹⁴³ Article 7, Constitution of Brazil (2013).

4.3 CONCLUSION

In this chapter, we explored a comparative analysis of international policies aimed at protecting domestic workers, focusing on the Philippines and Brazil. The Philippines' Domestic Workers Act (Batas Kasambahay) and the support from the Overseas Workers Welfare Administration (OWWA) were highlighted for their comprehensive legal protections and support services. Brazil's Constitutional Amendment 72 (PEC das Domésticas) was noted for extending labour rights and social security benefits to domestic workers.

The analysis identified common strategies such as establishing robust legal frameworks, providing support and welfare services, negotiating bilateral agreements, conducting awareness campaigns, and strengthening monitoring and enforcement mechanisms. These strategies offer valuable insights for enhancing the protections for Kenyan domestic workers in the KSA, ensuring their rights and well-being are safeguarded.



CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

5.1 SUMMARY AND CONCLUSIONS

At the onset, this dissertation set out to explore the complex issue of domestic servitude among KDW in the KSA, examining the socio-economic drivers, legal frameworks, and structural conditions that contribute to their exploitation. In Chapter 1, the paper provided the background to the study, outlining the research objectives, questions, and hypothesis. It also justified the study's importance and presented the theoretical framework and literature review, which highlighted the structural and systemic exploitation of migrant domestic workers and the shortcomings in legal reforms and policies.

Chapter 2 delved into the factual situation of domestic servitude among KDW in the KSA. We examined the socio-economic factors driving Kenyans to seek employment in the KSA, such as the unemployment crisis in Kenya. The chapter also analyzed the structural framework in the KSA, including the integration of Sharia law in labour laws and the impact of the Kafala system on domestic workers. It was established that these factors significantly contribute to the exploitation and poor working conditions faced by KDW.

Consequently, chapter 3 assessed Kenya's legal and institutional framework governing labour migration to the KSA. Existing laws and regulations, key policies, and bilateral agreements between Kenya and Saudi Arabia were reviewed. The effectiveness of these legal protections was analyzed through case studies, and the roles of governmental and non-governmental organizations in supporting and protecting KDW were evaluated.

Chapter 4 provided a comparative analysis of international policies aimed at protecting domestic workers, focusing on the Philippines and Brazil. The analysis has found common strategies and practices that can be applied in the Kenya-Saudi context, including proactive bilateral agreements, integration of migration into national development planning, inclusion of domestic workers in social security systems, and extensive awareness campaigns to inform both workers and employers about their rights and obligations.

In conclusion, this dissertation has successfully consolidated various strands of literature to present a comprehensive overview of the enforcement of protections for KDW in the KSA. By identifying

key challenges and proposing actionable solutions, this study aims to contribute to the ongoing efforts to improve labour conditions and ensure the rights and well-being of KDW are safeguarded.

5.2 RECOMMENDATIONS

To enhance the protections for KDW, several key recommendations are proposed, drawing from the analysis in previous chapters and international best practices.

Firstly, the NEA should implement a comprehensive risk awareness campaign for KDW considering employment in the KSA. This campaign should clearly outline the potential risks associated with these jobs, similar to the way health warnings on cigarette packets highlight the dangers of smoking, NEA could also highlight the risks that come with working in the KSA. By providing explicit information about the risks of exploitation, poor working conditions, and legal challenges, prospective workers can make more informed decisions about their employment options.

To ensure transparency and accountability, there should be a mandatory requirement for all employment contracts of KDW in the KSA to be deposited with the Kenyan consulate in the KSA. This measure will help protect workers by ensuring that their employment terms are documented and can be referenced in case of disputes or violations. It will also facilitate better monitoring and support from the consulate.

Drawing from international best practices, Kenya can adapt successful models to protect its domestic workers. For instance, the Philippines' approach, which includes comprehensive legal protections under the *Batas Kasambahay* and support services provided by the OWWA, can serve as a model. Similarly, Brazil's *PEC das Domésticas*, which extends labour rights and social security benefits to domestic workers, offers valuable insights.

To effectively implement these policies in Kenya and ensure their effectiveness, several practical steps are recommended. Strengthening legal frameworks is essential; amending existing labour laws to include specific protections for domestic workers will ensure they have access to fair wages, social security benefits, and legal recourse. Negotiating and enforcing bilateral agreements with the KSA that outline clear protections for KDW, including mechanisms for dispute resolution and repatriation support, is also crucial. Conducting extensive awareness campaigns to educate

domestic workers about their rights and available protections both before departure and while working abroad will empower them to advocate for themselves. Establishing dedicated support services for migrant workers, including pre-departure training, legal assistance, and welfare programs, will provide essential resources. These services should be accessible through the Kenyan consulate in the KSA.

Developing robust monitoring mechanisms to ensure compliance with labour laws and bilateral agreements is necessary. This could include regular inspections and collaboration with Saudi authorities to address violations promptly. Finally, fostering partnerships with non-governmental organizations that specialize in migrant worker rights will provide additional support and advocacy for KDW.

To mitigate the socio-economic factors driving Kenyans to seek employment in the KSA, such as the unemployment crisis, the Kenyan government should focus on creating more job opportunities domestically. This could involve investing in vocational training programs, promoting entrepreneurship, and enhancing economic development initiatives. Advocating for reforms to the Kafala system in the KSA, which significantly contributes to the exploitation of domestic workers, is also essential. This could involve working with international organizations and Saudi authorities to push for changes that provide greater freedom and protection for migrant workers.

Additionally, this paper acknowledges the proposed Labour Migration Management Bill and advocates for its passage into law. In addition to the Labour Migration Management Bill, these recommendations aim to further enhance the protections and support for KDW. By implementing these recommendations, Kenya can enhance the protections for its domestic workers, ensuring their rights are safeguarded and their well-being is prioritized.

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